

NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE
VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007 (AS AMENDED)

CASE REFERENCE NUMBER: 25/10

EDWARD STIRLING - APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mr Tom Matthews FRICS and Mrs Angela Matthews

Hearing: 18 April 2011, Belfast

DECISION

The unanimous decision of the tribunal is that the Decision on Appeal of the Commissioner of Valuation for Northern Ireland is upheld and the appellant's appeal is dismissed.

REASONS

Introduction

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant had requested, at the time the appeal was instituted, that his appeal should be dealt with by oral hearing. The appellant appeared at hearing and represented himself. The respondent at hearing was represented by Mr Neill together with Mr Bleakley.

2. The appellant, by Notice of Appeal, undated but received by the office of the tribunal on 7 January 2011, appealed against the decision of the Commissioner of Valuation on appeal dated 18 October 2010 in respect of the valuation of a hereditament situated at number 50 Teeshan Road, Ballycosh, Ballymena, County Antrim BT43 5PN (“the subject property”) whereby the non-exempt domestic capital value was determined at a figure of £155,000. By Order made 14 January 2011 a Chairman of the tribunal extended time to deliver the Notice of Appeal, without objection on the part of the respondent.
3. At the outset of the hearing the tribunal sought to clarify with the parties the primary issues for determination. For the respondent, Mr Neill indicated that there were two primary issues. These were, firstly, an issue in regard to rising damp stated to have been present in the subject property, which the appellant contended substantially reduced his use and enjoyment of the property (and the statutory assumption in regard to that – as referred to in more detail below) and, secondly, an issue whereby the appellant contended that the subject property was partially exempt from rating for the reason that some outbuildings forming part of the subject property had an agricultural use. The appellant clarified to the tribunal that he agreed with the respondent’s representative that these were the primary issues to be determined by the tribunal and indeed that he did not specifically seek directly to challenge the validity or appropriateness of any of the comparables evidence sought to be adduced on behalf of the respondent. The tribunal is grateful to the parties for clarifying matters at the outset and thus aiding the tribunal’s task by particularly directing the tribunal’s focus to these specific issues and to any relevant evidence.

The Law

4. The statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”). The tribunal does not intend in this decision fully to set out the statutory provisions of Article 8 of the 2006 Order, which amended Article 39 of the 1977 Order as regards the basis of valuation, as these provisions have been fully set out in earlier decisions of this tribunal. All relevant statutory provisions were fully considered by the tribunal in arriving at its decision in the matter. There was however one specific matter in this appeal in regard to which the tribunal thinks that it is best to set out, briefly, the

statutory provisions. The 1977 Order (as amended) provides for the definition of "agricultural land" and "agricultural buildings". Schedule 1, 2 (1) provides as follows:-

2. –(1) in this Order, "agricultural buildings"-

- (a) means, buildings occupied together with agricultural land and used solely in connection with agricultural operations thereon, or buildings being or forming part of a market garden and used for the purposes of thereof;

The Evidence and Facts

5. The tribunal noted the written evidence and submissions. The tribunal had before it the appellant's Notice of Appeal to the tribunal (Form 3) and various documents including the following:-

- The Commissioner's Decision on Appeal dated 18 October 2010.
- The appellant's Notice of Appeal (Form 3).
- A document entitled "Presentation of Evidence" prepared on behalf of the Commissioner by Mr Gareth Neill MRICS and submitted to the tribunal for the purposes of the tribunal hearing.
- Correspondence between the tribunal and the parties.

6. The following facts were not in contention. The subject property consists of a dwellinghouse situated at 50 Teeshan Road, Ballycosh, Ballymena, County Antrim BT43 5PN, this being about one mile from the outskirts of Ballymena town. The appellant is understood to be the ratepayer. The subject property is a detached and extended two-storey house built prior to 1919, together with a garage and outbuildings. The gross external area ("GEA") of the dwellinghouse is GEA 166m². The subject property has a detached garage of GEA 35m² and there are outbuildings attached to this garage of GEA 181m². The dwellinghouse is of rubble masonry/block/render construction with pitched roof and wood double glazed windows. The subject property has mains electricity and water and is served by a septic tank, but has no central heating. On the ground floor are two reception rooms, and a kitchen. On the first floor there are three bedrooms. The capital value was

entered into the valuation list at £160,000. That valuation was subsequently reduced by the Commissioner's Decision on Appeal, as mentioned above, to £155,000. These values are of course notionally assessed as at 1 January 2005 (that being the antecedent valuation date, or "AVD") for the purposes of the statutory domestic rating scheme. Mr Neill helpfully clarified to the tribunal that the proportion of the foregoing figure of £155,000 to be attributed to the outbuildings, excluding the garage which was to be taken with the dwellinghouse, was £5,000. Thus the proportion of the total capital value for the dwellinghouse and the garage alone was £150,000.

7. In addition to these non-contentious facts, the tribunal heard evidence from the appellant that there was considerable damp present in one of the two ground floor reception rooms. The appellant stated that this was very significant and extended from one corner of the room approximately 50% along one wall and approximately 40% along another. This damp problem, he stated, caused any wallcoverings to peel off and any paint to flake; any furniture stored in the room and curtains became affected by mould. The appellant contended that he had ceased to use the room and he kept the door closed normally and the window opened for ventilation from time to time. Mr Neill stated that upon his visit to the property he had observed and taken some photographs of the affected area (which photographs were available to the tribunal for inspection in the presentation of evidence). Nonetheless, Mr Neill did not think that either the area affected, which he stated extended only some two to three feet from the corner, or the general effect of this problem, would substantially reduce the potential use and enjoyment of the subject property to such a degree as to bring it outside the respondent's fair assessment that the subject property was in an average state of internal repair and fit out, having regard to its age and character and its locality. The tribunal further questioned the appellant about the practical effect of this issue.
8. Turning then to the matter of the outbuildings, there is a detached garage, the subject matter of which was not in contention. However, attached to this garage were substantial outbuildings extending to GEA 181m². The appellant's evidence was that he let the five acres of land, held with the subject property, in conacre for six months of the year. During that part of the year when this land was let in conacre, the appellant stated that the outbuildings were occasionally used for

loading cattle or for storage of a tractor. However, for the remainder of the year the outbuildings were used mainly for cutting timber for firewood for the appellant's own use and for general storage and any resultant sawdust from the appellant's wood-cutting activities was placed in bags and could be used for bedding for animals. The appellant's evidence was that, whilst the subject property had originally been purchased as a smallholding by his late father, with agricultural use being conducted, he personally did not hold any stock or animals nor did he engage in any form of agricultural activities or in market gardening. Any use of the adjacent lands was for part only of the year and use was conducted only by the person who let the lands from him in conacre.

THE SUBMISSIONS

9. The Commissioner's submission, as respondent, to the tribunal was that, in arriving at the capital value assessment of the subject property, regard was had to the statutory basis of valuation. Thus regard was had to the capital values in the valuation list of comparable hereditaments in the same state and circumstances as the subject property. It was contended that the "comparables", set out in a schedule to the Presentation of Evidence, were similarly circumstanced to the subject property and that these provided best evidence of value. It was stated that none of the comparables had challenged their assessments. No direct sales evidence was put forward by the respondent. In the Presentation of Evidence there were five comparables in total, including the subject property. The comparables were all located in relatively close proximity to the subject property, considering that this was a rural location. The respondent's listed comparables, in addition to the subject property, were, firstly, number 81 Fenagh Road, Ballymena; secondly, number 100 Fenagh Road, Ballymena; thirdly, number 17 Ballycosh Lane, Cullybackey, Ballymena; and fourthly, number 51 Tullygrawley Road, Ballymena, all County Antrim. A Copy of the Commissioner's Presentation of Evidence had been provided to the appellant.

10. The respondent's submission was that the most relevant comparables were 81 Fenagh Road, Ballymena and 17 Ballycosh Lane, Cullybackey, Ballymena. The appellant, in response, made it clear to the tribunal that he did not wish specifically to challenge the presentation of any of the comparables in evidence; the appellant

maintained that he did not know very much about any of these properties. The tribunal thus made its assessment of the evidential value of these comparables in the determination of the case.

11. In respect of the appellant's contention that the subject property had been very substantially devalued by the presence of damp, the written submission made on behalf of the respondent was that Schedule 12 of the 1977 Order (as amended) set out various valuation assumptions including:- "*The hereditament was in an average state of internal repair and fit out, having regard to the age and character of the hereditament and its locality*". In the respondent's case, it was accepted that damp was evident in one ground floor reception room (but not elsewhere in the subject property). It was submitted that any evidence of damp was not excessive for a dwelling of this age and character. The subject property was considered by the respondent to be in "average" repair, taking account of the terms of the foregoing statutory provision.

12. The respondent therefore has included the following points in submissions. The most appropriate comparables, in the absence of any sales evidence, were 81 Fenagh Road and 17 Ballyclosh Lane, Ballymena. Both of these properties were in relatively close proximity to the subject property, approximately the same size as regards the main dwelling house and the outbuildings were equivalent and all of these properties were generally similarly circumstanced in terms of age. The details in regard to 81 Fenagh Road, Ballymena, were that this had a GEA of 167m², a double garage of GEA 115m² and an outbuilding of 11m². This was a detached house constructed pre-1919 with mains electricity/water and septic tank and full central heating. The unchallenged capital value was £165,000. The details in regard to 17 Ballyclosh Lane, Cullybackey, Ballymena, were that this had a GEA of 169m², a garage of GEA 40m² and an outbuilding of 43m². This was a detached house constructed pre-1919 with mains electricity/water and septic tank and full central heating. The unchallenged capital value was £165,000. The subject property did not have central heating, whereas the other properties had full (or in one case part) central heating. The respective capital value assessments in respect of all of the comparables identified were uncontested and these were as follows:-

- The subject property, 50 Teeshan Road, Ballyclosh, Ballymena - £155,000

- 81 Fenagh Road, Ballymena - £165,000
- 100 Fenagh Road, Ballymena - £210,000
- 17 Ballyclosh Lane, Ballymena - £165,000
- 51 Tullygrawley Road, Ballymena - £135,000

THE TRIBUNAL'S DECISION

13. Article 54 of the 1977 Order (as amended) enables a person to appeal to this tribunal against the decision of the Commissioner on appeal regarding capital value. In this case the capital value has been assessed at AVD (consequent upon the Commissioner's Decision on Appeal) at a figure of £155,000. On behalf of the Commissioner it has been contended that that figure is fair and reasonable in comparison to other properties; the statutory basis for valuation has been referred to and especially reference has been made to Schedule 12 to the 1977 Order (as amended) in arriving at that assessment. The appellant's contentions are as outlined above. The appellant has not submitted any alternative valuation but he feels that, on two grounds, the capital value ought to be reduced upon appeal. These two grounds may be referred to, in shorthand terms, as the "damp issue" and the "agricultural use" issue.
14. The tribunal notes the statutory presumption contained within the 1977 Order, Article 54(3). Thereby, any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown. In order to succeed in an appeal, the appellant must either successfully challenge and displace that statutory presumption of correctness, or the Commissioner's decision on appeal, objectively viewed, must be seen to be so incorrect that the statutory presumption must be displaced and the tribunal must adjust the capital value to an appropriate figure.
15. The tribunal saw nothing in the general approach taken to suggest that the matter had been approached for assessment in anything other than the prescribed manner as provided for in Schedule 12 of the 1977 Order, as amended.
16. The Commissioner's Statement of Case as set out in the Presentation of Evidence and the schedule of comparables was not specifically challenged by the appellant.

Instead, as mentioned, the appellant sought to rely only upon arguments in respect of the “damp issue” and the “agricultural use” issue.

17. The tribunal examined the essential issue of whether or not the appellant had put forward anything of sufficient weight effectively to challenge the evidence in the case emerging from the comparables, or other sufficient evidence or argument effectively to displace the statutory presumption of correctness in respect of the valuation.
18. The arguments made by the appellant are as summarised above. The statutory provisions state that the capital value of the property shall be the amount which (on the statutory assumptions) the property might reasonably have been expected to realise if it had been sold on the open market by a willing seller on the relevant capital valuation date. Further, in estimating the capital value regard shall be had to the capital values of comparable properties in the same state and circumstances as the property. The tribunal thus gave consideration to all of the evidence and argument and conducted an analysis of the appropriateness of selection and the weight to be attached to the various comparables, insofar as this related to the statutory basis of valuation.
19. The tribunal's analysis of the evidence from the respondent's selected comparables was that these were not inappropriate and that these were useful, to a greater lesser extent, in assisting with the determination of the appropriate capital value for the subject property. This was particularly so in regard to 81 Fenagh Road, Ballymena, and 17 Ballycosh Lane, Cullybackey, Ballymena, and the other evidence also was of assistance. The appellant indeed did not seek to challenge this evidence, relying instead on the “damp issue” and the “agricultural use” issue.
20. Addressing these arguments in turn, and beginning with the “agricultural use” issue, the tribunal notes that rating exemption is provided, under the terms of the 1977 Order, as amended, in respect of "agricultural buildings" which are defined in Schedule 1 to the 1977 Order. The tribunal notes that the statutory definition of "agricultural buildings" is as follows *"... buildings occupied together with agricultural land and used solely in connection with agricultural operations thereon, or buildings being or forming part of a market garden and used for the purposes of thereof..."*. The tribunal reminds itself, firstly, that the appellant has not maintained in his evidence that the buildings formed any part of a market garden. Furthermore, there

is no compelling evidence that the buildings are used solely in connection with agricultural operations. The appellant's evidence is that the primary use of these buildings is for the cutting and storing of firewood by the appellant for domestic use. The buildings are also used for general storage, including storage of bags of sawdust which might have a use for animal bedding and which are a by-product of the appellant's wood-cutting activities. Very occasional use occurs to assist the person letting the land in conacre for storing a tractor or for temporary holding of animals whilst these are being loaded into vehicles. Very forthrightly, the appellant did not endeavour to maintain that such latter use was common or frequent or conducted throughout the course of the year. Therefore, on a proper assessment of the evidence, it cannot be said that the buildings are used solely in connection with agricultural operations. Therefore the appellant's argument must fail in that respect.

21. Dealing then with the "damp issue", the tribunal noted the difference in assessment of the extent and affect of the damp present in one of the two ground floor reception rooms. Whilst the appellant contended in his evidence to the tribunal that he effectively "lost 40%", as he put it, of the use of the property in this regard, the respondent's evidence was that the size of the area affected and the extent of the effect was much less than stated by the appellant and was indeed such as would be routinely encountered in a property of this age and in these circumstances. Accordingly the respondent maintained that the statutory assumption of average internal condition ought properly to apply and that the situation was not of a nature, upon objective inspection and assessment, such as to bring the property outside the ambit of this statutory assumption. The statutory assumption emerges from the 2006 Order, Article 8, which amends Part I of Schedule 12 of the 1977 Order by adding paragraph 12 which provides for the statutory basis of valuation and which includes the general assumption – "**12.- (1) The hereditament is in an average date of internal repair and fit out having regard to the age and character of the hereditament and its locality**".
22. Noting the arguments and the evidence, the tribunal's assessment of the evidence of both the appellant and the respondent's witness and the photographic evidence available is that, whilst there was visible and apparent damp in one corner of the reception room, this was somewhat limited in extent, for the statutory purpose. The tribunal could not accept the appellant's argument that this effectively deprived the

appellant of 40% of the use of the subject property. Whilst the respondent did accept that there could be situations where a property was so severely affected by damp or by other factors such as to bring the property outside the ambit of the statutory assumption, this was not such a case, upon the facts. The tribunal concurs with that. Accordingly, the statutory assumption of average internal repair and fit out, having regard to the age and character of the subject property, applies to the circumstances of this case.

23. The tribunal then returns to the evidence of capital value available from the comparables and to the unchallenged capital values of the properties detailed as evidence, taking into account the statutory considerations which must apply in these matters.
24. Taking the evidence as presented to the tribunal, weighing this as to value and appropriateness, and noting the arguments and submissions, the tribunal's conclusion is that the appellant has not placed before the tribunal sufficient evidence, information and argument to enable the statutory presumption of correctness in respect of the capital value assessment to be displaced. The tribunal concludes that the Commissioner's assessment of capital value in respect of the subject property at a figure of £155,000 is not self-evidently or manifestly incorrect. On balance, the tribunal sees nothing of sufficient weight to displace the statutory presumption of correctness in respect of the Commissioner's capital value assessment.
25. The foregoing being the case, the appeal cannot succeed. The Commissioner's Decision on Appeal is upheld and accordingly the appeal is dismissed.

James V Leonard, President
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: